



February 11, 2005

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## SENATE BILL No. 379

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DIGEST OF SB 379 (Updated February 10, 2005 1:26 pm - DI 110)

**Citations Affected:** IC 24-3; IC 34-24.

**Synopsis:** Delivery sales of tobacco products. Prohibits the shipping of tobacco products other than cigars to an Indiana resident who is not a tobacco products distributor. Provides that the prohibition does not apply to cigarette manufacturers that meet certain requirements. Repeals statutes governing delivery sales of cigarettes.

**Effective:** July 1, 2005.

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### Weatherwax

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January 11, 2005, read first time and referred to Committee on Commerce and Transportation.  
February 10, 2005, amended, reported favorably — Do Pass.

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SB 379—LS 6911/DI 103+



February 11, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 379

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-3-5-0.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 0.1. As used in this chapter, "cigarette" has the**  
4 **meaning set forth in IC 6-7-1-2.**

5 SECTION 2. IC 24-3-5-0.2 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2005]: **Sec. 0.2. As used in this chapter, "cigarette**  
8 **manufacturer" means a person or an entity that does the**  
9 **following:**

10 **(1) Manufactures cigarettes.**

11 **(2) Does one (1) of the following:**

12 **(A) Participates in the Master Settlement Agreement (as**  
13 **defined in IC 24-3-3-6) and performs the person's or**  
14 **entity's financial obligations under the Master Settlement**  
15 **Agreement.**

16 **(B) Places the applicable amount into a qualified escrow**  
17 **fund (as defined in IC 24-3-3-7).**

SB 379—LS 6911/DI 103+



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**(3) Pays all applicable taxes under IC 6-7-1.**

SECTION 3. IC 24-3-5-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.3. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.**

SECTION 4. IC 24-3-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, "delivery sale" means a transaction for the purchase of tobacco products in which an offer to purchase tobacco products is made:

- (1) electronically using a computer network (as defined in IC 35-43-2-3);
- (2) by mail; or
- (3) by telephone;

and acceptance of the offer results in delivery of the tobacco products to a named individual **or entity** at a designated address.

SECTION 5. IC 24-3-5-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. As used in this chapter, "distributor" includes the following:**

- (1) A distributor as defined in IC 6-7-1-6.**
- (2) A distributor as defined in IC 6-7-2-2.**

SECTION 6. IC 24-3-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter, "merchant" means a person or an entity that engages in the selling of tobacco products by delivery sale. **The term does not include a cigarette manufacturer.**

SECTION 7. IC 24-3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3. **However, the term does not include a cigar.**

SECTION 8. IC 24-3-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. **(a) A merchant cigarette manufacturer may not mail or ship ~~tobacco products~~ cigarettes as part of a delivery sale unless, before mailing or shipping the ~~tobacco products~~, cigarettes, the merchant: cigarette manufacturer:**

- (1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:
  - (A) providing the prospective customer's address and date of birth;
  - (B) advising the prospective customer that:
    - (i) signing another person's name to the statement required under this subdivision may subject the person to a civil

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monetary penalty of not more than one thousand dollars (\$1,000); and

(ii) purchasing ~~tobacco products~~ **cigarettes** by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the ~~tobacco product~~ **cigarette** order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of ~~tobacco products~~ **cigarettes** by delivery sale is a taxable event for purposes of IC 6-7-1; ~~and IC 6-7-2;~~

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

SECTION 9. IC 24-3-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.5. (a) A merchant may not mail or ship tobacco products as part of a delivery sale to an Indiana resident or retailer (as defined in IC 24-3-2-2(d)) that is not a distributor.**

**(b) If the commission determines that a merchant has violated subsection (a):**

**(1) a distributor may not accept a shipment of tobacco products from the merchant for a period, not to exceed one (1) year, determined by the commission; and**

**(2) the commission may impose a civil penalty, not to exceed five thousand dollars (\$5,000), on the merchant for each violation of subsection (a), as determined by the commission.**

SECTION 10. IC 24-3-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. (a) A merchant cigarette manufacturer who mails or ships tobacco products cigarettes as part of a delivery sale shall:**

**(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:**

**(A) sign to accept delivery of the tobacco products; cigarettes; and**

**(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;**

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(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING  
OF ~~TOBACCO PRODUCTS~~ **CIGARETTES** TO A PERSON  
LESS THAN EIGHTEEN (18) YEARS OF AGE AND  
REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

- (1) delivers ~~tobacco products~~ **cigarettes** as part of a delivery sale without first receiving proof from the ~~merchant~~ **cigarette manufacturer** of compliance with section 6(a) of this chapter; or
- (2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a ~~merchant~~ **cigarette manufacturer** that mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale without using a third party service as required by subsection (a)(1):

- (1) The ~~merchant~~ **cigarette manufacturer** shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

- (A) sign to accept delivery of the ~~tobacco products~~ **cigarettes**; and

- (B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the ~~merchant~~ **cigarette manufacturer** or the ~~merchant's~~ **cigarette manufacturer's** employee making the delivery, appears to be less than twenty-seven (27) years of age.

- (2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the ~~merchant~~ **cigarette manufacturer**:

- (A) delivers the ~~tobacco products~~ **cigarettes** without first complying with section 6(a) of this chapter; or

- (B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The alcohol and tobacco commission shall deposit amounts

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collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 11. IC 24-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A **merchant cigarette manufacturer** shall, before mailing or shipping ~~tobacco products~~ **cigarettes** as part of a delivery sale, provide the department of state revenue with a written statement containing the **merchant's cigarette manufacturer's** name, address, principal place of business, and each place of business in Indiana.

(b) A **merchant cigarette manufacturer** who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

- (1) The name and address of the customer to whom the ~~tobacco products~~ **cigarettes** were delivered.
- (2) The brand name of the ~~tobacco products~~ **cigarettes** that were delivered to the customer.
- (3) The quantity of ~~tobacco products~~ **cigarettes** that were delivered to the customer.

(c) A **merchant cigarette manufacturer** who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

SECTION 12. IC 24-3-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A **merchant cigarette manufacturer** who delivers ~~tobacco products~~ **cigarettes** to a customer as part of a delivery sale shall:

- (1) collect and pay all applicable taxes under IC 6-7-1; ~~and IC 6-7-2~~; or
- (2) place a legible and conspicuous notice on the outside of the container in which the ~~tobacco products~~ **cigarettes** are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these ~~tobacco products~~ **cigarettes** have been shipped to you from a **merchant cigarette manufacturer** located outside the state in which you reside, the **merchant cigarette manufacturer** has under federal law reported information about the sale of these ~~tobacco products~~ **cigarettes**, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state

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1 taxes on these ~~tobacco products~~. **cigarettes**."

2 (b) For a violation of this section the alcohol and tobacco  
3 commission may impose, in addition to any other remedies, civil  
4 penalties as follows:

5 (1) If the person has one (1) judgment for a violation of this  
6 section committed during a five (5) year period, a civil penalty of  
7 at least one thousand dollars (\$1,000) but not more than two  
8 thousand dollars (\$2,000).

9 (2) If the person has two (2) unrelated judgments for violations of  
10 this section committed during a five (5) year period, a civil  
11 penalty of at least two thousand five hundred dollars (\$2,500) but  
12 not more than three thousand five hundred dollars (\$3,500).

13 (3) If the person has three (3) unrelated judgments for violations  
14 of this section committed during a five (5) year period, a civil  
15 penalty of at least four thousand dollars (\$4,000) but not more  
16 than five thousand dollars (\$5,000).

17 (4) If the person has four (4) unrelated judgments for violations  
18 of this section committed during a five (5) year period, a civil  
19 penalty of at least five thousand five hundred dollars (\$5,500) but  
20 not more than six thousand five hundred dollars (\$6,500).

21 (5) If the person has at least five (5) unrelated judgments for  
22 violations of this section committed during a five (5) year period,  
23 a civil penalty of ten thousand dollars (\$10,000).

24 SECTION 13. IC 24-3-5-8 IS AMENDED TO READ AS  
25 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The alcohol and  
26 tobacco commission may impose a civil penalty of not more one  
27 thousand dollars (\$1,000) on a:

28 (1) customer who signs another person's name to a statement  
29 required under ~~section 4(1)~~ **section 4(a)(1)** of this chapter; or

30 (2) ~~merchant cigarette manufacturer~~ who sells ~~tobacco products~~  
31 **cigarettes** by delivery sale to a person less than eighteen (18)  
32 years of age.

33 The alcohol and tobacco commission shall deposit amounts collected  
34 under this section into the youth tobacco education and enforcement  
35 fund established by IC 7.1-6-2-6.

36 SECTION 14. IC 34-24-1-1 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following  
38 may be seized:

39 (1) All vehicles (as defined by IC 35-41-1), if they are used or are  
40 intended for use by the person or persons in possession of them to  
41 transport or in any manner to facilitate the transportation of the  
42 following:

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(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

(viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

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1 (B) facilitate the commission of; or  
 2 (C) escape from the commission of;  
 3 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal  
 4 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting  
 5 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense  
 6 under IC 35-47 as part of or in furtherance of an act of terrorism.  
 7 (5) Real property owned by a person who uses it to commit any of  
 8 the following as a Class A felony, a Class B felony, or a Class C  
 9 felony:  
 10 (A) Dealing in or manufacturing cocaine, a narcotic drug, or  
 11 methamphetamine (IC 35-48-4-1).  
 12 (B) Dealing in a schedule I, II, or III controlled substance  
 13 (IC 35-48-4-2).  
 14 (C) Dealing in a schedule IV controlled substance  
 15 (IC 35-48-4-3).  
 16 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).  
 17 (6) Equipment and recordings used by a person to commit fraud  
 18 under IC 35-43-5-4(11).  
 19 (7) Recordings sold, rented, transported, or possessed by a person  
 20 in violation of IC 24-4-10.  
 21 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as  
 22 defined by IC 35-45-6-1) that is the object of a corrupt business  
 23 influence violation (IC 35-45-6-2).  
 24 (9) Unlawful telecommunications devices (as defined in  
 25 IC 35-45-13-6) and plans, instructions, or publications used to  
 26 commit an offense under IC 35-45-13.  
 27 (10) Any equipment used or intended for use in preparing,  
 28 photographing, recording, videotaping, digitizing, printing,  
 29 copying, or disseminating matter in violation of IC 35-42-4-4.  
 30 (11) Destructive devices used, possessed, transported, or sold in  
 31 violation of IC 35-47.5.  
 32 ~~(12) Cigarettes that are sold in violation of IC 24-3-5.2; cigarettes~~  
 33 ~~that a person attempts to sell in violation of IC 24-3-5.2; and other~~  
 34 ~~personal property owned and used by a person to facilitate a~~  
 35 ~~violation of IC 24-3-5.2.~~  
 36 ~~(13)~~ (12) Tobacco products that are sold in violation of IC 24-3-5,  
 37 tobacco products that a person attempts to sell in violation of  
 38 IC 24-3-5, and other personal property owned and used by a  
 39 person to facilitate a violation of IC 24-3-5.  
 40 (b) A vehicle used by any person as a common or contract carrier in  
 41 the transaction of business as a common or contract carrier is not  
 42 subject to seizure under this section, unless it can be proven by a

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preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 15. IC 24-3-5.2 IS REPEALED [EFFECTIVE JULY 1, 2005].

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## COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Transportation, to which was referred Senate Bill No. 379, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-3-5-0.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2005]: **Sec. 0.1. As used in this chapter, "cigarette" has the meaning set forth in IC 6-7-1-2.**

SECTION 2. IC 24-3-5-0.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2005]: **Sec. 0.2. As used in this chapter, "cigarette manufacturer" means a person or an entity that does the following:**

- (1) Manufactures cigarettes.**
- (2) Does one (1) of the following:**
  - (A) Participates in the Master Settlement Agreement (as defined in IC 24-3-3-6) and performs the person's or entity's financial obligations under the Master Settlement Agreement.**
  - (B) Places the applicable amount into a qualified escrow fund (as defined in IC 24-3-3-7).**
- (3) Pays all applicable taxes under IC 6-7-1."**

Page 2, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 6. IC 24-3-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter, "merchant" means a person or an entity that engages in the selling of tobacco products by delivery sale. **The term does not include a cigarette manufacturer.**

SECTION 7. IC 24-3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3. **However, the term does not include a cigar."**

Page 2, line 5, strike "merchant" and insert "**cigarette manufacturer**".

Page 2, line 6, strike "tobacco products" and insert "**cigarettes**".

Page 2, line 6, reset in roman "unless, before mailing".

Page 2, line 7, reset in roman "or shipping the".

Page 2, line 7, after "products," insert "**cigarettes,**".

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Page 2, line 7, reset in roman "the".  
 Page 2, line 7, after "merchant:" insert "**cigarette manufacturer:**".  
 Page 2, reset in roman lines 8 through 16.  
 Page 2, line 17, reset in roman "(ii) purchasing".  
 Page 2, line 17, after "products" insert "**cigarettes**".  
 Page 2, line 17, reset in roman "by a person less than".  
 Page 2, reset in roman lines 18 through 19.  
 Page 2, line 20, reset in roman "(C) confirming that the".  
 Page 2, line 20, after "product" insert "**cigarette**".  
 Page 2, line 20, reset in roman "order was placed by".  
 Page 2, reset in roman lines 21 through 22.  
 Page 2, line 23, reset in roman "(E) stating the sale of".  
 Page 2, line 23, after "products" insert "**cigarettes**".  
 Page 2, line 23, reset in roman "by delivery sale is a".  
 Page 2, line 24, reset in roman "taxable event for purposes of  
 IC 6-7-1".  
 Page 2, line 24, after "IC 6-7-1" insert ";".  
 Page 2, reset in roman lines 25 through 29.  
 Page 2, line 30, before "to" begin a new paragraph and insert:  
 "SECTION 9. IC 24-3-5-4.5 IS ADDED TO THE INDIANA CODE  
 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 1, 2005]: **Sec. 4.5. (a) A merchant may not mail or ship tobacco  
 products as part of a delivery sale**".  
 Page 2, between lines 39 and 40, begin a new paragraph and insert:  
 "SECTION 10. IC 24-3-5-5 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. (a) A merchant  
 cigarette manufacturer** who mails or ships ~~tobacco products~~  
**cigarettes** as part of a delivery sale shall:  
 (1) use a mailing or shipping service that requires the customer or  
 a person at least eighteen (18) years of age who is designated by  
 the customer to:  
 (A) sign to accept delivery of the ~~tobacco products~~; **cigarettes**;  
 and  
 (B) present a valid operator's license issued under IC 9-24-3 or  
 an identification card issued under IC 9-24-16 if the customer  
 or the customer's designee, in the opinion of the delivery agent  
 or employee of the mailing or shipping service, appears to be  
 less than twenty-seven (27) years of age;  
 (2) provide to the mailing or shipping service used under  
 subdivision (1) proof of compliance with section 6(a) of this  
 chapter; and  
 (3) include the following statement in bold type or capital letters

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on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF ~~TOBACCO PRODUCTS~~ **CIGARETTES** TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

- (1) delivers ~~tobacco products~~ **cigarettes** as part of a delivery sale without first receiving proof from the ~~merchant~~ **cigarette manufacturer** of compliance with section 6(a) of this chapter; or
- (2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a ~~merchant~~ **cigarette manufacturer** that mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale without using a third party service as required by subsection (a)(1):

- (1) The ~~merchant~~ **cigarette manufacturer** shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

- (A) sign to accept delivery of the ~~tobacco products~~; **cigarettes**; and

- (B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the ~~merchant~~ **cigarette manufacturer** or the ~~merchant's~~ **cigarette manufacturer's** employee making the delivery, appears to be less than twenty-seven (27) years of age.

- (2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the ~~merchant~~; **cigarette manufacturer**:

- (A) delivers the ~~tobacco products~~ **cigarettes** without first complying with section 6(a) of this chapter; or

- (B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The alcohol and tobacco commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 11. IC 24-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A ~~merchant~~

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**cigarette manufacturer** shall, before mailing or shipping ~~tobacco products~~ **cigarettes** as part of a delivery sale, provide the department of state revenue with a written statement containing the ~~merchant's~~ **cigarette manufacturer's** name, address, principal place of business, and each place of business in Indiana.

(b) A ~~merchant~~ **cigarette manufacturer** who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

- (1) The name and address of the customer to whom the ~~tobacco products~~ **cigarettes** were delivered.
- (2) The brand name of the ~~tobacco products~~ **cigarettes** that were delivered to the customer.
- (3) The quantity of ~~tobacco products~~ **cigarettes** that were delivered to the customer.

(c) A ~~merchant~~ **cigarette manufacturer** who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

SECTION 12. IC 24-3-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A ~~merchant~~ **cigarette manufacturer** who delivers ~~tobacco products~~ **cigarettes** to a customer as part of a delivery sale shall:

- (1) collect and pay all applicable taxes under IC 6-7-1; and ~~IC 6-7-2~~; or
- (2) place a legible and conspicuous notice on the outside of the container in which the ~~tobacco products~~ **cigarettes** are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these ~~tobacco products~~ **cigarettes** have been shipped to you from a ~~merchant~~ **cigarette manufacturer** located outside the state in which you reside, the ~~merchant~~ **cigarette manufacturer** has under federal law reported information about the sale of these ~~tobacco products~~ **cigarettes**, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these ~~tobacco products~~ **cigarettes**."

(b) For a violation of this section the alcohol and tobacco commission may impose, in addition to any other remedies, civil penalties as follows:

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(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) but not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) but not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) but not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

SECTION 13. IC 24-3-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The alcohol and tobacco commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

- (1) customer who signs another person's name to a statement required under ~~section 4(1)~~ **section 4(a)(1)** of this chapter; or
- (2) ~~merchant~~ **cigarette manufacturer** who sells ~~tobacco products~~ **cigarettes** by delivery sale to a person less than eighteen (18) years of age.

The alcohol and tobacco commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6."

Page 5, delete lines 33 through 35, begin a new paragraph and insert:

"SECTION 15. IC 24-3-5.2 IS REPEALED [EFFECTIVE JULY 1, 2005]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 379 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 10, Nays 0.

SB 379—LS 6911/DI 103+



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